

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

AUG 11 2005

at 1 o'clock and 14 min M
SUE BEITIA, CLERK

No. 04-10414
D.C. No. CR-03-00225-DAE

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS EDWIN RYCHENER,

Defendant - Appellant.

JUDGMENT

Appeal from the United States District Court for the District of Hawaii
(Honolulu).

This cause came on to be heard on the Transcript of the Record from the
United States District Court for the District of Hawaii (Honolulu) and was duly
submitted.

On consideration whereof, it is now here ordered and adjudged by this
Court, that the judgment of the said District Court in this cause be, and hereby is
AFFIRMED.

Filed and entered 07/08/05

A TRUE COPY
ATTEST 8/9/05
CATHY A. CATTERSON
Clerk of Court
by: [Signature]
Deputy Clerk

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUL 08 2005

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

DOUGLAS EDWIN RYCHENER,

Defendant - Appellant.

No. 04-10414

D.C. No. CR-03-00225-DAE

MEMORANDUM*

Appeal from the United States District Court
for the District of Hawaii
David A. Ezra, District Judge, Presiding

Argued and Submitted June 17, 2005
San Francisco, California

Before: CANBY and HAWKINS, Circuit Judges, and DUFFY,** Senior District
Judge.

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** The Honorable Kevin Thomas Duffy, Senior United States District Judge for the Southern District of New York, sitting by designation.

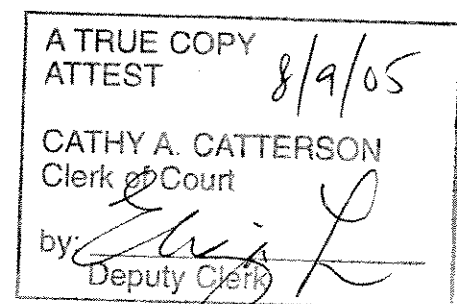
Defendant Douglas Rychener (“Rychener”) appeals the district court’s refusal to conduct a hearing pursuant to Franks v. Delaware, 438 U.S. 154 (1978). We affirm.

The alleged uncorroborated statements do not attack the search warrant affiant’s veracity and Rychener offers no proof that the affiant recklessly excluded such information from the affidavit. See United States v. Dicesare, 765 F.2d 890, 894-95, amended by, 777 F.2d 543 (9th Cir. 1985) (only the veracity of the affiant may be challenged). The affiant’s use of the terms “constant surveillance” and “obtained” were neither false, misleading, nor reckless. Rychener offers no proof that the specifics of the controlled buy, including the time and date, that no money was provided by law enforcement, and the amount of methamphetamine recovered, were recklessly omitted from the affidavit. Rychener makes no showing that the affiant knew or should have known of the informant’s alleged crush on Rychener’s wife, which precludes finding that such information was recklessly omitted from the affidavit.

Even if we were to determine that the informant’s recent arrest and deal to “work off” the charge to be a reckless omission, United States v. Martinez-Garcia, 397 F.3d 1205, 1216 (9th Cir. 2005), the arrest does not undermine a probable cause

finding in light of all the other information in the affidavit. See id. at 1208-09, 1217.

AFFIRMED.



INTERNAL USE ONLY: Proceedings include all events.
04-10414 USA v. Rychener

UNITED STATES OF AMERICA
Plaintiff - Appellee

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DOUGLAS EDWIN RYCHENER
Defendant - Appellant

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